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June 9, 2001

REGULATORY AUTH.
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EXECUTIVE SECRETARY

VIA HAND DELIVERY

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

***Re: Small Telephone Companies Tariff Filings Regarding Reclassification of Pay
Telephone Service as Required by Federal Communications Commission
(FCC) Docket 96-128.
Docket No. 97-01181***

Dear Mr. Waddell:

Enclosed please find the original and thirteen (13) copies of the Reply Comments of the Coalition of Tennessee Small Local Exchange Companies in Response to Notice of April 24, 2001, for filing in the above-referenced docket. I have also enclosed an additional copy of the Comments, which I would appreciate your stamping "filed," and returning to me by way of our courier.

Should you have any questions with respect to this matter, please do not hesitate to contact me.

Best regards.

Very truly yours,



R. Dale Grimes

RDG/gci

Enclosures

cc: Guy M. Hicks, Esq. (w/ enclosure)
James B. Wright, Esq. (w/ enclosure)
Timothy C. Phillips, Esq. (w/ enclosure)
Henry L. Walker, Esq. (w/ enclosure)
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Jon Hastings, Esq. (w/ enclosure)
Mr. Bruce H. Mottern (w/ enclosure)

Mr. K. David Waddell
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Ms. Linda Lowrance (w/ enclosure)

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
SMALL TELEPHONE COMPANIES)	
TARIFF FILINGS REGARDING)	Docket No. 97-01181
RECLASSIFICATION OF PAY TELEPHONE)	
SERVICE AS REQUIRED BY FEDERAL)	
COMMUNICATIONS COMMISSION (FCC))	
DOCKET 96-128)	

**REPLY COMMENTS OF COALITION OF TENNESSEE SMALL LOCAL
EXCHANGE COMPANIES IN RESPONSE TO NOTICE OF APRIL 24, 2001**

The Coalition of Tennessee Small Local Exchange Companies (the "Coalition"), consisting of the following companies: (1) Ardmore Telephone Company, Inc.; (2) the Century Tel, Inc. Companies in Tennessee consisting of (a) Century Tel of Adamsville, Inc.; (b) Century Tel of Claiborne, Inc.; and (c) Century Tel of Ooltewah-Collegedale, Inc.; (3) Loretto Telephone Company, Inc.; (4) the TDS Telecom Companies in Tennessee consisting of (a) Concord Telephone Exchange, Inc.; (b) Humphreys County Telephone Company; (c) Tellico Telephone Company, Inc.; and (d) Tennessee Telephone Company; (5) the Telephone and Electronics Corp. ("TEC") Companies in Tennessee consisting of (a) Crockett Telephone Company, Inc.; (b) Peoples Telephone Company, Inc.; and (c) West Tennessee Telephone Company, Inc. and (6) United Telephone Company, Inc., respectfully submits these reply comments to the responses of the Tennessee Payphone Owners Association (the "TPOA") with respect to the questions presented in the April 24, 2001 Notice of the Hearing Officer, Director Greer.

1) How should the Authority set rates for the small incumbent local exchange carriers (ILECs) consistent with Section 276 of the Telecommunications Act of 1996, related FCC orders, and the Authority's decisions in Docket No. 97-00409?

Coalition Reply:

The TPOA presumes that the appropriate standard for setting payphone access lines ("PAL") rates for the small companies in this docket is the New Services test. As the basis for this presumption, the TPOA relies entirely on the Authority's order in Docket No. 97-00409, which applied only to the large price-regulated local exchange carriers ("LECs") and an order of the FCC's Common Carrier Bureau, which by its terms applies only to four carriers in Wisconsin.¹ Neither of these two orders is generally applicable to the small rate-of-return regulated companies in Tennessee. The TPOA ignores the fact as was addressed more fully by the Coalition in its initial Comments, that the FCC's own orders and rules clearly demonstrate that the New Services test applies only to price cap companies and thus does not apply to members of the Coalition.

For the payphone access line ("PAL") rate, the Authority should approve use of the smaller companies' basic business (B-1) rate. Application of the New Services test or requiring the use of forward-looking cost study models would be inappropriate in these proceedings because, as was recognized in the decision to establish a separate docket for the smaller carriers, requiring the parties to prepare and submit such cost studies would impose an undue burden on the small companies.²

¹ See *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, CCB/CPD No. 00-1, DA 00-347, Order (March 2, 2000) (the Common Carrier Order). In addition, the Common Carrier Order applies solely to the four largest carriers in that state, similar to the bifurcation between the small company and large company proceedings regarding the setting of payphone access line rates.

² See *Preliminary Report and Recommendation of the Hearing Officer* (May 29, 1997); *Order Establishing a Separate Docket for the Smaller Companies* (June 6, 1997).

The New Services test, by FCC Order, applies only to incumbent LECs under price cap regulation.³ Moreover, there is no requirement outside the inapplicable New Services test that a forward-looking cost methodology be used to determine PAL rates. Rate of return regulated LECs, such as the members of the Coalition, may use alternative cost support methodologies pursuant to Sections 61.38 and 61.39 of the FCC Regulations.

Other state commissions, such as that of Arizona,⁴ have determined that rate of return companies such as the Coalition members may lawfully set PAL rates at the B-1 rate. Use of the B-1 rate also would avoid discriminatory pricing, as all businesses would be charged the same rate. Moreover, the B-1 rate is a cost-supported rate determined for each of the smaller companies through the rate-of-return regulatory ratemaking process, taking into account the carriers' fully distributed costs, with the approval of the Authority. Thus, requiring the small LECs to develop forward-looking TELRIC or TSLRIC cost studies that they do not have and that are not required by any regulatory reason would impose an onerous and costly burden on the Coalition members that would be harmful to the companies and their ratepayers.

2) Should the small ILECs be given an opportunity to adopt wholly or partially the cost models used by the parties in Docket No. 97-00409, as adjusted by the Authority?

Coalition Reply:

The TPOA concedes that Coalition members may, if they choose, use a cost model adopted by a party to Docket No. 97-00409. This concession must be based upon the fact that any cost model utilized in the large company proceeding with approval of the Authority presumably would "promote the widespread deployment of payphone services" pursuant to 47

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dock. No. 96-128, *Report and Order*, 11 FCC Rcd 20541, 20614 (1996) ¶ 146.

⁴ *In the Matter of the Application of Southwestern Telephone Company for a Hearing to Determine the Fair Value of its Properties for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return Thereon, and to Approve Rate Schedules Designed to Provide Such Rate of Return*, Dock. No. T-01072A-97-0067, *Opinion and Order*, (Mar. 26, 1998).

U.S.C. § 276(b)(1), since that statute applies to both the large company and small company docket. Thus, as the Coalition set forth in its initial Comments, to the extent that a small LEC would find it beneficial to utilize the cost models used by the parties to Docket No. 97-00409, it should be given an opportunity to adopt wholly or partially such models, as adjusted by the Authority. However, the small companies should not be required to utilize those models for cost studies because, as recognized by the Authority, it would be very costly and time consuming for the small companies.

3) Should the small ILECs be given an opportunity to adopt wholly or partially the permanent rates approved by the Authority in Docket No. 97-00409?

Coalition Reply:

It appears that the TPOA agrees with the Coalition that it would be appropriate for a company to adopt rates set in Docket No. 97-00409, but adds the requirement that the TPOA's agreement or stipulation to that adoption would be necessary. As set forth in the Coalition's initial comments, however, a company meeting certain requirements may unilaterally adopt those rates under the FCC's existing rules.

Moreover, it is a routine practice for rate of return regulated carriers simply to adopt the cost-based rates of other carriers. For example, as set forth in the Coalition's initial Comments, rates charged by incumbent price regulated LECs are presumptively lawful (i.e., one would not have to "purport to defend the legality" thereof) if adopted by an adjacent rate of return carrier.⁵

The TPOA suggests that rates adopted in the large company docket could be "applied" to the Coalition members as interim rates pending submission of cost studies and establishment of permanent rates. It is unnecessary to restate the Coalition's position that its members should not be required to submit cost studies. However, the Coalition also submits that it would be

⁵ 47 C.F.R. § 61.39.

inappropriate for an interim rate established in Docket No. 97-00409 to be imposed upon the small companies. The small companies were separated out of that Docket in recognition of the undue burden on them of producing cost studies, implicitly acknowledging that different methodologies should be used for ratemaking for different sized companies, which are subjected to different regimes of regulation. Moreover, application of an interim rate would greatly complicate and extend these proceedings, as well as require additional proceedings and hearings regarding another prospective "true up." However, if an interim rate should be deemed necessary, the Coalition proposes that the Authority adopt the B-1 rate.

4) Will the proceedings for the small ILECs require evidentiary hearings? If so, should the hearings be conducted separately or in a consolidated proceeding?

Coalition Reply:

As set forth above in the Reply to Item 1, generation of cost studies and the use of the New Services test would be inappropriate in this docket and, in any event, as the small LECs' B-1 rates should be used for PALs. The Coalition nonetheless reiterates that evidentiary hearings may be advisable due to the nature of ratesetting proceedings and that it is likely that the proceedings should be consolidated for all companies.

5) What procedural schedule should the Authority adopt for the proceedings?

Coalition Reply:

The TPOA states that the Coalition members should be directed to adopt interim rates based on rates set for BellSouth or Citizens in Docket No. 97-00409, and then should submit cost studies. With respect to the TPOA's reference to the length of the proceedings in this docket, however, it should be remembered that the timetable for this docket was determined by an Agreed Motion for Continuance in the large company payphone docket, Docket No. 97-00409, filed on March 4, 1998 by the TPOA.

The Coalition reiterates its Reply Comments to Question 3 that imposing interim rates on the small LECs in the manner proposed the TPOA would be extremely inappropriate. Also again, burdensome cost studies should not be required.

Instead, as the Coalition stated in its original Comments, the Authority should make an early decision that neither the New Services test, nor any other methodology requiring burdensome and expensive cost studies will be applied to the Coalition members.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Dale Grimes", is written over a horizontal line.

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*Attorneys for the Coalition of Tennessee
Small Local Exchange Companies*

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Comments of the Coalition of Tennessee Small Local Exchange Companies in Response to Notice of April 24, 2001, was served on the following, via United States mail, postage prepaid, this the 8th day of June, 2001:

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